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MEMORANDUM

TO: Vermont General Assembly

FROM: Willa Farrell, Court Diversion & Pretrial Services Director

RE: Pretrial Services and Court Diversion Report pursuant to 13 V.S.A. § 7554c(f) and 3 V.S.A. § 164(d)

DATE: December 1, 2022

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## Statutory Report Requirements

[13 V.S.A. § 7554c\(f\)](#) and [3 V.S.A. § 164\(d\)](#) direct the Office of the Attorney General to report annually to the General Assembly on services provided and outcome indicators for Court Diversion and Pretrial Services.

## I. Services Provided

### Needs Screening & Risk Assessment [13 V.S.A. § 7554c](#)

Pretrial Services staff offer needs screenings and, upon the request of a judge, risk assessments to individuals lodged and unable to post bail within 24 hours. Results of the assessment and screening may inform decisions made by judges and prosecutors. For example, if a screening suggests a person is struggling with substance use, a judge may issue a Pretrial Services order including that the person meet with a counselor for a clinical assessment. Needs screenings direct the focus of Pretrial Service Coordinators' work with individuals. Since summer 2022, PTS Coordinators have provided screenings in-person in some Department of Corrections facilities, following limited telephone screening instituted with the onset of the pandemic.

### Pretrial Services [13 V.S.A. § 7554c](#)

Pretrial Services are provided to people aged 18 and older with substance use or mental health treatment needs who are going through the court process and awaiting final case resolution. Judges order defendants to work with Pretrial Services; however, a person's refusal to engage cannot result in a violation of conditions of release. In addition, individuals may choose to engage with Pretrial Services without a Court order. Pretrial Service Coordinators quickly connect people to substance use, mental health, and other supportive community-based services.

### Court Diversion Program [3 V.S.A §§ 163 and 164\(b\)\(1\)](#)

This restorative justice program is for youth with a delinquency petition, a Youthful Offender, and adults charged with a crime and referred by a prosecutor. A person charged with a felony offense that is a crime listed in 13 V.S.A. § 5301(7) is not eligible for Court Diversion. Only prosecutors may refer cases to Diversion. Court Diversion case managers work with those referred who are willing to take responsibility for their actions and engage in a restorative process aimed at repairing the harm. Prosecutors subsequently dismiss the charge of successful participants, and records are expunged two years later.

### Tamarack Program [3 V.S.A § 164\(b\)\(2\)](#)

This restorative justice program, based on the second purpose in the Court Diversion statute, is for people aged 18 and older charged with a delinquency or crime who have a substance use or mental health treatment need regardless of their criminal history. Program staff quickly connect those referred to substance use, mental health and other supportive community-based services. Participants must be willing to take responsibility for their actions and engage in a restorative process aimed at repairing the harm. Prosecutors subsequently dismiss the charge of successful participants, and records are expunged two years later.

## FY 2022 Data

### Pretrial Services

Judges increased their use of Pretrial Services. The number of orders increased by 24% in FY 2022 compared to FY 2021. Approximately 20% of defendants ordered to work with Pretrial Services were charged with a felony. [See table on page 6.](#)

Following the establishment of the [Vermont Judiciary Commission on Mental Health and the Courts](#), the Attorney General's Office presented to judges about Pretrial Services. This discussion and other work stemming from the Commission may lead to a further increase in referrals to Pretrial Services.

### Adult Diversion and Tamarack

Data on referrals to Adult Court Diversion and Tamarack for FY 2022, FY 2021, and FY 2020 are summarized in a [table on page 7](#); similar information for Youth Diversion is on [page 8](#). These data do not capture the full picture of Diversion referrals; for example, prosecutors also refer felony cases to Diversion. Approximately 5% of referrals are felony charges. Data limitations have restricted this analysis to using added misdemeanor charges. These data illustrate the important role of Diversion and Tamarack in resolving criminal cases. Diversion of cases to these community restorative justice programs is a standard component of the criminal justice system.

The past few years, referrals have fluctuated with the effects of the pandemic on the criminal justice system. During FY 2022, the rate of referral to Adult Court Diversion and Tamarack increased in seven counties, while the statewide rate declined 1%. In FY 2022, Diversion and Tamarack referrals represented 20% of all misdemeanors, the lowest rate since FY 2018. During FY 2022, the number of new misdemeanor charges in Criminal Division decreased statewide by 6%.

### Youth Diversion & Youthful Offenders

In FY 2022, 42% of delinquencies filed in Family Diversion were referred to Youth Diversion and 25% of Youthful Offenders were referred to Youth Diversion. These rates have trended upward during the past few years.

### Possible Causes of Geographical Disparities in Referrals

The rate of referral to Court Diversion and Tamarack varies by county for a number of reasons. The rate and type of crime varies by county, law enforcement has discretion regarding when to issue a citation or make a direct referral to a pre-charge program, and prosecutors retain discretion regarding when to file a charge or a delinquency or youthful offender petition. Factors that affect a prosecutor's decision to refer to Diversion or Tamarack include the individual facts of the case, the prosecutor's

views on restorative justice for repeat offenders, and their experience working with the county Court Diversion program.

Specific to the data included in this report, the Department of State's Attorneys has provided several caveats that also help explain the different rates of referral to Diversion and Tamarack.

#### Data Caveats

In reviewing this chart, please keep in mind several caveats provided by the Department of State's Attorneys regarding the data:

1. Not all misdemeanor offenses are presumptively eligible for Diversion or Tamarack. The data sources regarding charged misdemeanors included in the chart do not distinguish between eligible and non-eligible offenses. For example, a DUI charge is not presumptively eligible for Diversion.
2. The data sources do not distinguish misdemeanor charges that arise when an individual has another ineligible docket pending or is already under Department of Corrections supervision, which may be reasons a prosecutor does not refer to Court Diversion.
3. Some State's Attorneys use pre-charge programs and other types of specialized alternatives where they are available instead of Diversion. These referrals account for a significant number of cases that are not captured in the data below.
4. The decentralized system of delivering alternative justice programs results in inconsistencies in the quality of services that are offered in each county.
5. The "Diversion Referral – Criminal Division" data points only identify referrals in which the Defendant accepted the Diversion offer. It does not include referrals made by the State's Attorney but declined by the Defendant.

#### Race Data

The AGO first started to collect race data as reported by participants in FY 2020. Data on ethnicity is not captured. The [table](#) on the following page shows the percentage of referrals to programs by race category for the past two years.

## Referrals by Race – Court Diversion and Pretrial Services

Court Diversion: Family Division		FY 2022		FY 2021	
		Referrals	% of Total	Referrals	% of Total
Delinquencies & YO	Alaskan American	0	0%	0	0%
	American Indian	1	0%	1	0%
	Asian	1	0%	1	0%
	Black or African American	11	4%	9	3%
	Native Hawaiian or other Pacific Islander	0	0%	0	0%
	Other Single Race	2	1%	3	1%
	Two or More Races	3	1%	6	2%
	White	245	88%	267	90%
	Unknown	15	5%	9	3%
	<b>Total</b>	<b>278</b>		<b>296</b>	

Court Diversion: Criminal Division		FY 2022		FY 2021	
		Referrals	% of Total	Referrals	% of Total
Court Diversion & Tamarack	Alaskan American	0	0%	0	0%
	American Indian	3	0%	3	0%
	Asian	8	1%	9	1%
	Black or African American	42	3%	41	4%
	Native Hawaiian or other Pacific Islander	0	0%	0	0%
	Other Single Race	12	1%	15	1%
	Two or More Races	10	1%	13	1%
	White	1265	89%	1833	86%
	Unknown	76	5%	26	8%
	<b>Total</b>	<b>1416</b>		<b>1940</b>	

Pretrial Services		FY 2022		FY 2021	
		Referrals	% of Total	Referrals	% of Total
	Alaskan American	0	0%	0	0%
	American Indian	1	0%	0	0%
	Asian	11	1%	12	2%
	Black or African American	30	4%	38	5%
	Native Hawaiian or other Pacific Islander	1	0%	0	0%
	Other Single Race	10	1%	7	1%
	Two or More Races	4	0%	7	1%
	White	677	84%	607	83%
	Unknown	71	9%	61	8%
	<b>Totals =</b>	<b>805</b>		<b>732</b>	

## Pretrial Services – Court Orders

	FY 2022			FY 2021			FY 2020		
	New Misd Charges	Pretrial Services*	PTS as % of New Misd Charges	New Misd Charges	Pretrial Services*	PTS as % of New Misd Charges	New Misd Charges	Pretrial Services*	PTS as % of New Misd Charges
Addison	302	87	29%	251	62	25%	293	58	20%
Bennington	668	30	4%	767	19	2%	789	17	2%
Caledonia	524	50	10%	525	11	2%	424	29	7%
Chittenden	1,558	268	17%	1,458	197	14%	2,495	181	7%
Essex	66	3	5%	58	4	7%	46	7	15%
Franklin	921	55	6%	976	34	3%	1,027	60	6%
Grand Isle	48	6	13%	94	4	4%	82	2	2%
Lamoille	365	99	27%	414	156	38%	428	196	46%
Orange	234	31	13%	328	10	3%	261	39	15%
Orleans	451	68	15%	581	46	8%	560	30	5%
Rutland	755	10	1%	694	6	1%	805	15	2%
Washington	1163	91	8%	1,149	96	8%	1,015	83	8%
Windham	851	109	13%	903	86	10%	707	49	7%
Windsor	713	0	0.0%	981	1	0.1%	602	2	0.3%
<b>Total</b>	<b>8,619</b>	<b>907</b>	<b>11%</b>	<b>9,179</b>	<b>732</b>	<b>8%</b>	<b>9,534</b>	<b>768</b>	<b>8%</b>

*New Misdemeanor Charges - data provided by Vt. Judiciary*

*Other data gathered by AGO from county programs*

## Adult Court Diversion and Tamarack – Prosecutor Referrals

	FY 2022				FY 2021				FY 2020			
	New Misd Charges	Diversion Referrals Criminal Division	Tamarack Referrals	Diversion & Tamarack as % of New Misd Charges	New Misd Charges	Diversion Referrals Criminal Division	Tamarack Referrals	Diversion & Tamarack as % of New Misd Charges	New Misd Charges	Diversion Referrals Criminal Division	Tamarack Referrals	Diversion & Tamarack as % of New Misd Charges
Addison	302	68	16	28%	251	69	15	33%	293	96	26	42%
Bennington	668	139	34	26%	767	225	49	36%	789	125	60	23%
Caledonia	524	58	15	14%	525	68	9	15%	424	67	14	19%
Chittenden	1558	98	54	10%	1,458	39	43	6%	2,495	448	139	24%
Essex	66	5	0	8%	58	2	0	3%	46	11	4	33%
Franklin	921	96	24	13%	976	141	8	15%	1,027	223	20	24%
Grand Isle	48	9	0	19%	94	15	0	16%	82	16	7	28%
Lamoille	365	108	28	37%	414	94	20	28%	428	98	22	28%
Orange	234	79	3	35%	328	83	11	29%	261	111	14	48%
Orleans	451	86	15	22%	581	70	11	14%	560	80	19	18%
Rutland	755	85	13	13%	694	98	20	17%	805	131	67	25%
Washington	1163	236	44	24%	1,149	227	47	24%	1,015	209	84	29%
Windham	851	55	10	8%	903	40	16	6%	707	81	30	16%
Windsor	713	235	71	43%	981	386	136	53%	602	294	75	61%
<b>Total</b>	<b>8,619</b>	<b>1,357</b>	<b>327</b>	<b>20%</b>	<b>9,179</b>	<b>1,557</b>	<b>385</b>	<b>21%</b>	<b>9,534</b>	<b>1,990</b>	<b>581</b>	<b>27%</b>

*New Misdemeanor Charges - data provided by Vt. Judiciary*

*Other data gathered by AGO from county programs*

## Youth Court Diversion and Youthful Offenders – Prosecutor Referrals

	FY 2022						FY 2021					
	New Filings		Diversion Referrals				New Filings		Diversion Referrals			
	Delinquency Filings	Youthful Offenders	Delinquency	YO	Del. Referrals as % of Filings	YO Referrals as % of Filings	Delinquency Filings	Youthful Offenders	Delinquency	YO	Del. Referrals as % of Filings	YO Referrals as % of Filings
Addison	42	13	22	2	52%	15%	20	10	6	3	30%	30%
Bennington	63	23	22	1	35%	4%	95	7	38	0	40%	0%
Caledonia	11	15	8	5	73%	33%	38	24	7	7	18%	29%
Chittenden	81	78	15	30	19%	38%	68	94	9	19	13%	20%
Essex	1	2	0	0	0%	0%	4	2	3	1	75%	50%
Franklin	71	52	20	9	28%	17%	89	39	23	3	26%	8%
Grand Isle	1	10	0	5	0%	50%	2	7	2	4	100%	57%
Lamoille	38	5	27	1	71%	20%	13	5	9	0	69%	0%
Orange	27	11	20	3	74%	27%	37	2	19	1	51%	50%
Orleans	27	14	3	2	11%	14%	51	18	16	4	31%	22%
Rutland	24	15	15	0	63%	0%	55	18	4	0	7%	0%
Washington	71	41	42	17	59%	41%	84	43	56	9	67%	21%
Windham	46	9	8	0	17%	0%	56	6	10	0	18%	0%
Windsor	70	31	38	4	54%	13%	69	33	30	12	43%	36%
<b>Total</b>	<b>573</b>	<b>319</b>	<b>240</b>	<b>79</b>	<b>42%</b>	<b>25%</b>	<b>681</b>	<b>308</b>	<b>232</b>	<b>63</b>	<b>34%</b>	<b>20%</b>

*New Delinquency Filings - data provided by Vt. Judiciary*

*Other data gathered by AGO from county programs*